AHMAD BIN SALLEH & 26 ORS.

v.

RAWANG HILLS RESORT SDN BHD

HIGH COURT MALAYA, SHAH ALAM
DATO' JAMES FOONG CHENG YUEN J
[CIVIL SUIT NO. 22-140-94]
3 AUGUST 1995

CONTRACT: *Agreement to sell shares in land to defendant - Deposit paid - Sale of defendant's beneficial interests in land to third parties - Contract terminated for breach - Whether defendants have derived a beneficial right over the land - Whether third party sale permitted by agreements - Whether defendants bona fide purchasers - Whether defendants a legally incorporated entity when sale agreement executed - Whether terms in agreements void for uncertainty - Whether defendant entitled to specific performance.*

CONTRACT: *Sale of shares in land - Power of attorney granted to defendants to facilitate partition of land - Defendants selling beneficial interests in land to third parties - Whether defendants selling as agents of plaintiffs under power of attorney - Whether defendants breached duty to principal.*

The plaintiffs were the registered proprietors of 70% of undivided shares in a piece of land in Rawang which were sold to the defendants by two written agreements. The deposit was duly paid. In order to facilitate the partitioning of the land, deeds of irrevocable power of attorney were granted to the defendants. The relevant application was made in January 1992 but was only approved on 4 February 1994 and two separate documents of title were issued. On 22 June 1992, the defendants attempted to sell their beneficial interests in the land to a third party but the sale was aborted. The defendants eventually sold their interests to two companies on 10 September 1993. The plaintiffs terminated the agreements and sued for damages for breach and the defendants counterclaimed for specific performance and damages.

The plaintiffs contended (i) that the defendants breached the power of attorney as it did not give the defendants the right to sell the land, (ii) the defendants' beneficial interests did not exist until full payment of the purchase price, (iii) the defendants were not *bona fide* purchasers but speculators as they lacked sufficient funds to complete the purchase as evidenced by their attempts to sell their beneficial interests to third parties, (iv) the defendants deliberately delayed securing the partition of the land, (v) when the first sale agreement was executed the defendants were not incorporated, and (vi) the agreements were void for uncertainty i.e. the phrase "issue document of title pertaining to the total acreage of the land sold jointly by the vendors," in clause 10 of the agreements.

Held:

[1] There is the creation in equity of trusteeship in the vendor for the purchaser's right after a sale and purchase agreement has been entered, and the rights of the vendor are reduced to a charge or lien over the land sold as security for the payment of the balance of the purchase price. The beneficiary in this trust must be the purchaser and the rights must be the beneficial ownership to the said land. This beneficial ownership is transformed to a complete legal ownership when the full balance of the purchase price is paid, and the land is transferred and registered in the name of the purchaser.

[2] It is clear from the rampant usage of the word "assignee" after the word "purchaser" throughout the agreements that the plaintiffs recognise the rights of the defendants' assignees, which includes the transfer to such assignees of the plaintiffs' shareholdings in the land. As far as the defendants' are concerned they have only their beneficial ownership to the land. This thereby gives the defendants a right under the agreements to sell off their beneficial ownership to a third party.

[3] A deed of power of attorney only grants specific powers to a donee to act for and on behalf of the donors, but when the donee himself possesses a personal right to act and proceeds under this capacity rather than the former, then he commits no breach of duty even when his act contradicts the powers granted to him under the power of attorney. Nowhere is it stated in the three sale agreements with the third party purchasers that the defendants were acting as agent of their principal to dispose off their principal's shareholdings. The defendants were in fact selling in their own capacity as beneficial owner of the land and did not derive their authority from the power of attorney.

[4] In a contract of sale, the question of whether the defendants are *bona fide* purchasers is irrelevant where no fraud or misrepresentation exist. Whether the defendants are speculators or purchasing the said land for their own development is of no concern of the plaintiffs for the law does not prohibit such activities. As to whether the defendants are able to pay the balance of the purchase price, this can only be determined at the time when such payment is due under the said agreements. If the defendants are unable to pay, then as provided by the agreements forfeiture of the 10% deposit will be effected.

[5] From the evidence by the defendants surveyor who submitted the relevant applications for partition, and the state officer who processed the applications, together with records tendered there are no traces of acts of deliberate delays in the process of partition. The time may have taken a little longer but these are within the confines of the administrative process by the relevant authorities.

[6] It cannot be denied that when the first sale and purchase agreement was executed the defendants were not in existence, but this does not prevent the defendants from rectifying such an agreement under s. 35 of the Companies Act which the defendants did by way of a resolution of directors .

[7] The main objective of the parties in the agreements which consequently led to the granting of the power of attorney was for the completion of the sale to take place after the land was partitioned. The "issue document of title pertaining to the total acreage " in this context can mean no other than the issue document of title after partition, for it is then that the total acreage equivalent to the palintiffs' shareholdings would be determined.

[8] The plaintiffs' arbritary termination of the agreements is invalid. Accodingly, the defendants' claim for specific performance is allowed.

[Plaintiffs' claim dismissed with costs. Defendants' counterclaim for specific performance allowed with costs, damages disallowed]

Cases referred to:

M & J Frozen Food Sdn. Bhd. & Anor. v. Siland Sdn. Bhd. & Anor. [1994] 1 AMR 4 137 ***(refd)***
Macon Engineers Sdn. Bhd. v. Goh Hooi Yin [1976] 2 MLJ 53 ***(refd)***
Lysaght v. Edwards [1876] 2 Ch D 499 ***(foll)***
Peninsular Land Development v. Ahmad [1970] 1 MLJ 149 ***(dist)***

Legislation referred to:
Companies Act 1965, s. 35
National Land Code

Other source referred to:
Osborn's Concise Law Dictionary, 8th Edn.

For the plaintiff - R. Arunachalam (Mohd Idris Habib with him); M/s. Mohd Idris & Associates
For the defendant - R.R. Sethu (G.C Chan & M.L Saw with him); M/s. P.M. Tan, Chan & Partners

JUDGMENT

James Foong Cheng Yuen J:

The plaintiffs are registered proprietors of various proportions of undivided shares in a piece of land held under Geran 35908 for Lot 3514 Mukim of Rawang, Daerah Gombak, Selangor (hereinafter referred to as the said land). Their undivided shares amount to approximately 70% or more of the entire shareholdings in the said land.

By two agreements in writing dated 12 April 1991 and 12 November 1991 (the agreement dated 12 April 1991 shall be referred to as the first sale and purchase agreement and both the agreements dated 12 April 1991 and 12 November 1991 shall be jointly referred to as the said agreements) respectively, the plaintiffs agreed to sell their respective undivided shares in the said land (hereinafter referred to as the plaintiffs' shareholdings) to the defendants their nominee or nominees. The said agreements have identical terms and conditions except for the difference in particulars relating to the vendors and the amount of purchase price corresponding to the amount of undivided shares owned by each plaintiffs. Under the said agreements the plaintiffs were paid a sum equivalent to 10% of their respective purchase price. As for the 1st plaintiff he had received up to 20% of his purchase price from the defendants.

Under clause 10 of the said agreements, the "completion date of this sale and purchase of the said land shall be six (6) months from the date of this agreement or on the date on which the issue document of title pertaining to the total acreage of the land sold jointly by the vendors is released to the purchaser's solicitors (which date is later)". "Completion date" under clause 3(a) of the said agreements means the date when the balance of the purchase price is to be paid.

Under clause 4 of the said agreements the respective solicitors acting for the vendors and purchasers are named as:

(a) for the vendors - M/s. Xavier & Chandran and;
(b) for the purchasers - M/s. Tengku Mohamed Achan & Lim.

There is also a provision under the said agreements for the execution of the memorandums of transfers by the plaintiffs at the time of signing of the said agreements, and the same be kept by the purchasers solicitors for the purpose of adjudication and subsequent transfer after the completion date.

Clause 8 of the said agreements further provides for the granting of an irrevocable power of attorney by the plaintiffs to the defendants "for the purpose of partitioning of the said land through normal process as provided for in the National Land Code ...". This was duly performed by the plaintiffs on 15 April 1991 and 12 November 1991 respectively, when the defendants were granted two deeds of irrevocable power of attorney (these two power of attorney shall hereinafter be jointly referred to as the power of attorney).

Upon entering into another agreement to purchase a further amount of undivided shares from one other owner on 12 December 1991, the defendants through their surveyors in January 1992 applied to partition the said land into two. According to the evidence of the surveyor, DW5 various problems were encountered in this process. It was not until 4 February 1994 that the application for partition was approved. This led to the original document of title to the said land being surrendered and cancelled by the Land Office resulting in the reissuance of two separate documents of title on 27 June 1994.

Disputes would not have arisen, in the opinion of this Court, if two things had not happened. Firstly, the application for the partition of the said land had not taken such a long time, and secondly, the defendants had not attempted to sell their beneficial rights or interest or ownership in the said land to a third party. The latter happened on 22 June 1992 when the defendants describing themselves as "beneficial owners of undivided 218/272 shares" in the said land attempted to sell such rights, interest or beneficial ownership to a company by the name of Austral Amalgamated Tin Bhd (AATB in short). What seems to have caused the furor among the plaintiffs when they heard this news was that the consideration involved in this transaction was RM100,000 per acre, as compared to RM32,000 or slightly more per acre to be paid by the defendants to the plaintiffs.

Towards the end of 1993 when the partition of the said land was pending approval, some of the plaintiffs threatened to terminate the said agreements unless the balance of the purchase prices was paid. A legal firm M/s. Mohd Idris & Associates by letter dated 12 January 1994 and 13 January 1994 respectively, claiming to be acting for all the plaintiffs gave 7 days notice to the defendants to terminate the said agreements, and to revoke the power of attorney. The defendants through their solicitors replied rejecting such plaintiffs' attempts and insisted on specific performance.

When this case came up for trial in this Court, the land is already partitioned into 2, and there is now two separate issue documents of title for each of the partitioned parts of the said land. These two documents of title are in the land office pending collection.

Further, from the evidence tendered, the attempted sale by the defendants to AATB was aborted. In its place the defendants have entered into two new sale and purchase agreements, one with Magnum Corporation Bhd (Magnum) and the other with Cempaka Madu Sdn. Bhd. (Cempaka), both on 10 September 1993 to sell off their beneficial rights, interest and ownership over the said land. These agreements, this Court is told are still subsisting pending the outcome of this trial.

Realising the said agreements provide for no specific time limit to the defendants to secure the partition of the said land, the plaintiffs and their solicitors securitised practically every action of the defendants past and present, and on all available documents to find a basis to terminate the said agreements.

They finally came up with the following grounds to support their contention that the defendants have breached the said agreements:

(1) the defendants have sold the said land to a third party;

(2) the defendants were not *bona fide* purchasers;

(3) the defendants have purposely delayed the process of partition;

(4) the defendants were not incorporated when the first sale & purchase agreement was executed;

(5) the said agreements are void for uncertainty of terms;

(6) the solicitor one Mr. Xavier has represented to the plaintiffs that the purchase price will be paid within 6 months from date of the said agreements;

(7) the defendants have not informed the plaintiffs that the said land was to be compulsorily acquired by the State Government of Selangor.

The defendants obviously denied each and every one of these allegations, and their reasons shall be elaborated as this judgment proceeds.

The first issue of the plaintiffs' is based mainly on the power of attorney. Clause 6 therein provides as follows:

> This power does not empower our Attorney/Attorneys to charge mortgage sell assign or do any act or thing that will encumber all our rights title and interest in and to our said undivided share of the said land and/or negotiate sell and transfer off our undivided shares of the said land to any other person or persons and for that purpose to sign and execute all transfer and other instrument necessary for effecting the said transfer.

Due to the defendants' act in entering into sale and purchase agreements with AATB and subsequently with Magnum and Cempaka, the plaintiffs alleged that the defendants have breached the aforesaid clause.

The defendants however argued that clause 6 of the power of attorney differs from other clauses in the said agreements where they are permitted to sell off their beneficial rights, interest and ownership in the said land to any third party.

The plaintiffs however even denied such a right of the defendants exist for reason that until the full balance of the purchase price is paid, the defendants have no "beneficial ownership" to the said land. A number of authorities in support of this proposition, notably *M & J Frozen Food Sdn. Bhd. & Anor. v. Siland Sdn. Bhd. & Anor*. [1994] 1 AMR 4 137, and *Macon Engineers Sdn. Bhd. v. Goh Hooi Yin* [1976] 2 MLJ 53, were cited.

The issues therefore before this Court are two; firstly, whether by the said agreements the defendants have derived a beneficial right or ownership over the said land, and secondly, if they have, whether they are permitted to dispose off the same to a third party.

The law on the question of whether a purchaser under a sale and purchase agreement for a landed property derives a right, interest or beneficial ownership over the said land purchased is supposed to be settled in our law. However, by the plaintiffs' proposition that this beneficial ownership does not arise until full balance of the purchase price is paid, requires this Court to re-examine the various decided authorities on this point.

In the case of *Lysaght v. Edwards* [1876] 2 Ch D 499, Jassel M.R. has defined the rights of a purchaser under a contract of sale as follows:

> It appears to me that the effect of a contract for sale has been settled for more than two centuries;... it is that the moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase money, a charge or lien on the estate for the security of that purchase price, and a right to retain possession of the estate until the purchase money is paid, in the absence of express contract as to the time of delivering possession.

Because the above judgment relates to landed properties in England, the plaintiffs' Counsel has impressed upon this Court that English principles should not apply in our country where the Torren system of land registration is being practiced. However, it is

disappointing to say that this proposition would not be necessary if learned Counsel had continued to read the judgment of Suffian FJ (as he then was) in the case of *Peninsular Land Development* at [1970] 1 MLJ 149 @ 151 paragraph F (left) which adopted the above principle of Jassel M.R. to "applies also in jurisdiction where there is registration of titles".

The existence of a beneficial ownership under the contract of sale and purchase of land is further confirmed by Ali Hassan FJ in the Federal Court case of *Macon Engineering Sdn. Bhd. v. Goh Hooi Yin* [1976] 2 MLJ 53, where again adopting the passage of Jassel MR in *Lysaght v. Edwards* as law, he explained that:

> As I understand the above passage what passes under a contract for sale is only the beneficial ownership... the vendor who still holds the interest in land does so hold as trustee and not owner.

So it is clear that after a sale and purchase agreement for the sale of land is concluded, the purchaser under our Malaysian law derives a beneficial ownership to the said land. But what follows next is the remarks of Suffian FJ (as he then was) in the *Peninsular Land Development* case where it is stated as follow:

> In my judgment, the company becomes in equity as trustee for the plaintiff and the beneficial ownership passed to the plaintiff as soon as the purchase price has been paid.

This, according to the plaintiffs' Counsel would mean that beneficial ownership in landed property would not pass to the purchaser after the execution of the sale and purchase agreement, until the full balance of the purchase price is paid. To strengthen his argument, the learned Counsel then proceeded to quote from the judgment of the Supreme Court in the case of *M & J Frozen Food* (*supra*) at p. 150 where Wan Yahya SCJ expressed as follows:

> Although the authorities seem to differ on the level of transaction at which the bare or constructive trusteeship would arise, the rationale are unanimous on one issue i.e. such trusteeship can only arise on payment of the balance of the purchase price or on payment of the full purchase price. In *Peninsular Land Development v. Ahmad* [1970] 1 MLJ 149 Suffian FJ (as he then was) said that the beneficial ownership passes to the purchasers as soon as the purchase price has been paid. So was it held in a New Zealand case of *Official Assignee v. Johnson* [1975-1977] ALR 285 where the Court held that the purchaser only becomes owner of the land subject to his obligation to pay the purchase price.

After a careful perusal of the aforesaid dictums particularly that of Suffian FJ (as he then was) in the *Peninsular Land Development* case., this Court is of the humble opinion that the "judgment" of the learned Judge in that case must be strictly confined to the facts of that particular case where the full balance of the purchase price had already been paid. This must be so, for the learned Judge had in the earlier part of his judgment accepted the principle enunciated by Jassel MR which stressed on the creation in equity of trusteeship in the vendor for the purchaser's right after a sale and purchase agreement has been entered, and the rights of the vendor are only reduced to a charge or lien over the land sold including that of retaining possession (unless otherwise agreed) as a security for payment of the balance of the purchase price. The beneficiary in this trust must be the purchaser and the rights so formulated must be the beneficial ownership to the said land. This beneficial ownership would be transformed to a complete legal ownership when the full balance of the purchase price is paid, and the land is thereafter transferred and registered in the name of the purchaser as proprietor under the National Land Code. To rule otherwise, would give absolutely no meaning to the principle expressed by Jassel MR

in *Lysaght's* case which has been adopted into our law. It would be indicrous to on one hand accept that a beneficial ownership exists after the sale and purchase agreement is executed, while on the other stating that such beneficial ownership can only exist when the full balance of the purchase price is paid; this certainly is a direct contradiction in terms. Similarly, the findings of the learned Supreme Court Judge in *M & J Frozen Foods* case must be taken within the context that it applies only to the facts the *Peninsular Land Development* case for it was on this decision (of the *Peninsular Land Development* case) that Wan Yahya SCJ relied upon when he finds that beneficial ownership only passes to the purchaser as soon as the purchase price has been paid.

Having settled this issue, this Court shall now examine whether firstly the said agreements permit the defendants the right to sell off their beneficial ownership in the said land to a third party. A perusal of the said agreements reveals the rampant usage of the word "assignee" after the word "purchaser", throughout. By this, it is significantly clear that the parties, particularly the plaintiffs have agreed to recognise the rights of the defendants' assignees, which would include the transfer to such assignees of the plaintiffs' shareholdings in the said land. An "assignee" by definition in *Osborn's Concise Law Dictionary*, 8th Edition means "a person to whom an assignment is made", and "an assignment" is defined in the same dictionary as "a transfer of property". If it is a transfer of property, one can only transfer what one has, and in this case, as far as the defendants are concerned they have only their beneficial ownership to the said land. This thereby gives the defendants a right under the said agreements to sell off their beneficial ownership to a third party. Though this may be permitted, but there is a differing term in the form of clause 6 in the power of attorney which prohibits such attempts of sale or transfer of the plaintiffs' shareholding to a third party. In order to deliberate on this matter one must understand the nature and purpose of a power of attorney:

> A power of attorney is a formal instrument by which one person, the donor of the power, confers on another, the donee, power to act on behalf of the donor in the performance of a specific act or classes of act or generally" (*Halsbury Laws of England* Vol. 4(1) paragraph 627). By such a creation, the donor as principal shall be liable to a third party for the acts of the donee, his agent, if the donee has acted within the bounds of his authority or such acts of the donee being subsequently rectified by the donor. The law applicable under these circumstances between the donor and the donee is therefore that of principal and agent (see *Halsbury Laws of England* Vol. 2(1) paragraph 86).

Clause 6 of the power of attorney does not empower the defendants as agents of the plaintiffs to sell or assign or even negotiate to sell and transfer the plaintiffs' rights, title and interest in the said land to any other person or persons. If the defendants are to act on the power of attorney what they are not empowered to do, the plaintiffs would have the right not to honour such contrary deeds, nor are the plaintiffs liable to any third party for such action of the defendants. But, when the defendants proceeded to sell off their beneficial ownership in the said land to a third party were they prosecuting such actions as agents of their principal?. If they were, then a breach of duty has occurred and the plaintiffs would be entitled to their rights as spelled out above, mainly, not to honour such acts and be liable to any third party. However, from the facts adduced there is no evidence of the defendants having utilised the power of attorney to transact with AATM, Magnum and Cempaka on the sale of the plaintiffs' shareholdings. Nowhere is it stated in any of the three sale and purchase agreements with the three third party purchasers that the defendants were acting as agent of their principal to dispose off their principals' shareholdings. Under these three agreements the defendants were in fact transacting and

selling in their own capacity their beneficial ownership in the said land. They have not utilised the power of attorney as an instrument to derive their authority; their authority came from their own contractual rights under the said agreements.

Such a distinction is essential for the deed of power of attorney only grants specific powers to a donee to act for and on behalf of the donors, but when the donee himself possesses a personal right to act and he proceeds under this capacity rather than the former, then he commits no breach of duty even when his act contradicts the powers granted to him under a deed of power of attorney. Arising from this principle, though the power of attorney contains a contradictory term to the rights arising from the said agreements, the defendants are not in breach of the said agreements when they exercised their rights to sell their beneficial interest since they carried on such activities not based on the power of attorney.

The second contention is that of the defendants not being a *bona fide* purchasers of the plaintiffs' shareholdings in the said land. The defendants, according to the plaintiffs are speculators and have no money of their own to complete this purchase. This, they based on the attempts by the defendants to sell their beneficial ownership to the said land to third parties.

In a contract of sale, the question of whether the defendants are *bona fide* purchasers is irrelevant where no fraud or misrepresentation exist. The said agreements contain the fundamental elements of voluntary offer and acceptance followed by payments of valuable consideration to the plaintiffs. Whether the defendants are speculators or purchasing the said land for their own development is of no concern of the plaintiffs for the law does not prohibit such activities. As to whether the defendants are able to pay the balance of the purchase price, this can only be determined at the time when such payment is due under the said agreements. If the defendants are unable to pay, then as provided by the said agreements forfeiture of the initial 10% deposit will be effected. The issue of *bona fide* purchaser has absolutely no relevance to this case.

The next contention of the plaintiffs is that of deliberate delay by the defendants to secure partition of the said land. In order to determine on this issue, it is necessary to note that the total plaintiffs' shareholdings only formed approximately 70% of the entire undivided share in the said land. There were other minority co-proprietors who did not sell their shareholdings to the defendants. This being the case, the said land had to be partitioned into two; one representing the portion owned by the plaintiffs and the other for the other minority co-proprietors, leading to the issuance of two documents of title after partition.

From the evidence by the defendants' surveyor who submitted the relevant applications for partition, and the state officer who processed such applications, together with records tendered there are no traces of acts of deliberate delays in this process of partition. The time may have taken a little longer than normal but all these are within the confines of the administrative process by the relevant authorities. In fact, this Court finds the defendants have even gone to greater extent to expedite this process of partition by purchasing at great expense a piece of adjoining land which has a road frontage in order to secure an access into the said land, as was requested by the authorities prior to the approval of the partition.

The next contention relates to the time of incorporation of the defendants when the first sale and purchase agreement was executed. This first sale and purchase agreement was executed on 12 April 1991 by one Chan Wah Long "for and on behalf of the purchaser Rawang Hills Resort Sdn. Bhd.". At that material time, the defendants were not as yet

incorporated. According to the evidence of Chan Wah Long (DW2), he purchased a shelf company by the name of Bestbond Sdn. Bhd.". This company was incorporated on 25 April 1991 but its name was subsequently changed to Rawang Hill Resort Sdn. Bhd. and finally Rawang Hills Resort Sdn. Bhd.

From evidence as tendered, it cannot be denied that when the first sale and purchase agreement was executed the defendants were not in existence, but this does not prevent the defendants from rectifying such an agreement under s. 35 of the Companies Act.

The defendants did exactly this by way of a resolution of directors on 10 May 1991. The plaintiffs' Counsel however argued that this resolution was actually a declaration of trust by the defendants to hold this beneficial ownership in the said land on trust for Chan Wah Long himself. Though this may be true, but for the purpose of this issue on rectification this Court is of the opinion that the following words, "THAT the Company do hereby affirmed and rectified the purchase of the benefits and rights to the sale and purchase agreement for the acquisition of 186 acres being part of Lot 3514, Mukim of Rawang made up to 12 April 1991" found in the first part of this resolution, is sufficiently clear for the defendants to rectify the said agreements. Rectification can be combined with other matters in a resolution, but so long as its expression of rectification is clear, as in this case, the process of rectification is completed by such an act.

In addition to the above, as rightly pointed out by the defendants' Counsel, the plaintiffs are estopped from making this contention by the very fact that they have throughout this period until just before trial accepted the defendants as a legal entity in this first sale and purchase agreement.

As for the submission that, the said agreements are void for uncertainty in terms, the plaintiffs' contention centres upon the phrase "issue document of title pertaining to the total acreage of the land sold jointly by the vendors," found in clause 10 of the said agreements. After perusing through the entire evidence of this case, this Court is of the opinion that the main objective of the parties in the said agreements which consequently lead to the granting of the power of attorney was for the completion of the sale to take place after the said land is partitioned. The "issue document of title pertaining to the total acreage" in this context can mean no other than the issue document of title after partition, for it is then that the total acreage equivalent to the plaintiffs' shareholdings would be determined. In fact from the evidence of the 6th plaintiff himself, he has clearly admitted that "the balance of the purchase price depends upon the land being partitioned". When the land has to be partitioned then separate documents of title would be issued. Thus under clause 6 of the said agreements, the balance of the purchase price will only be paid, if it is later than 6 months from date of the said agreements, then only when issue document of title of the said land after partitioned is issued. It is so absurd for the plaintiffs to suggest that the disputed phrase refers to a portion of the land taken by a road operating company known as PLUS for highway usage, when the same is not pleaded and supported by substantive evidence. This approach is more likely used by the plaintiffs to cloud the true nature and intention of the parties.

The sixth contention of the plaintiffs is that Mr. Xavier has represented to them that the balance of the purchase price would be paid within 6 months from date of the said agreements. What surprises this Court is that Mr. Xavier was clearly the plaintiffs' solicitors in the said agreements. His firm's name is clearly stated in clause 4 to represent the vendors. Any representation by Mr. Xavier to the plaintiffs is a matter entirely of no concern to the defendants. It is a matter strictly between the plaintiffs and their solicitor and cannot be made a ground to allege the defendants' breach of the agreements.

As to the final contention that the defendants have breached the said agreements for having not made known to the plaintiffs of a compulsory acquisition of the said land, this Court finds absolutely no justification. There has never been any official notification of such an acquisition, and what the defendants did, particularly DW5, was to eliminate any such idea of acquisition by the authorities even before it may be formulated officially. Such acts of the defendants are not a breach of any terms and conditions of the said agreements since there was never any official notification of acquisition.

There was also another allegation that the defendants have not complied with the terms of the said agreements in obtaining F.I.C (Foreign Investment Committee) approval of the purchase of the plaintiffs' shareholdings in the said land. This issue need not even be considered by this Court for it was never pleaded.

Based on the above reasons, this Court hereby dismisses the plaintiffs' claim with cost. As for the defendants' counter-claim, this Court finds the plaintiffs arbitrary termination of the said agreements invalid, and accordingly, allows the defendants' claim for specific performance of the said agreements. Consequentially, the memorandums of transfers duly executed by the plaintiffs and tendered in Court as exhibits P15 (1-27) shall be returned to the defendants' solicitors M/s. PM Tan, Chan & Partners who shall hold them as stakeholders until the balance of the purchase price is paid by the defendants to the plaintiffs' solicitors M/s. Mohd Idris & Co. within 30 days, from date of this order in accordance with the mode and manner stated in the said agreements. In the event of the defendants' failure to complete this purchase within this stipulated 30 days, the plaintiffs would have the right to terminate the said agreements under clause 12 therein. Upon payment of the full balance of the purchase price the defendants shall have the right to obtain from the Registrar of Land Title the issue documents of title to that partitioned portion of land containing the plaintiffs, shareholdings, thereafter the defendants are entitled to effect transfer of the plaintiffs' shareholdings into their names or to that of their nominee or nominees.

As for the defendants counter-claim for special damages under prayer (b), this Court disallows it as there should be no loss now that specific performance to the defendants is allowed. As for the claim for general damages, this Court finds no evidence of any losses suffered by the defendants and therefore also disallows the same. In respect of cost for the counter-claim, this Court hereby orders it to be paid by the plaintiffs to the defendants.